April 7, 2015

The Honorable John Thune
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ben Cardin
509 Hart Senate Office Building
Washington, D.C. 20510

Re: Structured Settlements Enable the Newly Injured to Live with Dignity, Independence, and Freedom from Reliance on Government

Dear Senators Thune & Cardin:

The National Structured Settlements Trade Association (NSSTA) is an organization composed of more than 1,200 members throughout the country who specialize in negotiating and funding structured settlements of tort and worker's compensation claims involving persons with serious, long-term physical injuries. NSSTA has been working to advance the use of structured settlements as a means of resolving physical injury claims since 1986. Structured settlements provide the injured person with the financial security of an assured payout over time. We, along with the American Association of People with Disabilities (AAPD), applaud the Committee for its work involving the review and evaluation of Federal Tax Code provisions.

Structured settlements provide a private sector funding alternative to taxpayer-financed assistance programs to meet the ongoing, long-term medical and basic living needs of seriously-injured persons and their families, providing long-term financial security through an assured stream of payments tailored to the injured person's needs throughout his or her lifetime.

Structured settlements have been widely used in the tort area for more than three decades, and in worker's compensation for nearly two decades. In a structured settlement, a voluntary agreement is reached between the parties under which the injured person receives damages in the form of a stream of periodic payments tailored to his or her future medical expenses and basic living needs from a well-capitalized, financially-experienced institution.

Structured settlements also enable injured persons to live with dignity, free of reliance on government by providing a private sector funding alternative to the traditional taxpayer-financed assistance programs in order to meet the ongoing, long-term medical and basic living needs of seriously-injured persons and their families. This is done through an assured stream of payments tailored to their needs.

With bipartisan support Congress has adopted special tax rules to encourage use of structured settlements to provide long-term financial protection to injured persons and their families. These structured settlement tax rules have worked effectively over the past three decades and should remain part of the tax law in any reform effort.

For over a decade NSSTA and AAPD forged a string partnership in order to promote the peace of mind and long-term financial security inherent in structured settlements to the newly injured and disabled. For anyone who comes to disability through accident or injury, they and their loved ones face new questions and uncertainties. Structured settlements remove many of the challenges that confront them regarding long term financial and healthcare needs.

From a public health perspective, settlements keep many from reliance on government and protect scarce resource dollars. Through the efforts of AAPD and NSSTA, persons who become disabled through accident or injury will gain financial security and peace of mind.

About AAPD

The American Association of People with Disabilities (AAPD) is the nation's largest disability rights organization. AAPD promotes equal opportunity, economic empowerment, independent living, and political participation for people with disabilities. Our members, including people with disabilities and their families, friends, and supporters, represent a powerful force for change.

About the National Structured Settlements Trade Association

The National Structured Settlements Trade Association (NSSTA) is an organization composed of more than 1,200 members throughout the country. These members specialize in negotiating and funding structured settlements of tort and worker's compensation claims involving persons with serious, long-term physical injuries. Structured settlements provide the injured person with the financial security of an assured payout over time. Founded in 1986, NSSTA's mission is to advance the use of structured settlements as a means of resolving physical injury claims.

NSSTA's members include: structured settlement brokers who work with plaintiff counsel and defense counsel to develop, negotiate, and implement the structured settlement for the injured person; life insurance companies which fund the structured settlements through annuities; property and casualty companies and self-insured entities which enter into the structured settlement with the injured person to resolve his or her physical injury claim; and various attorneys, economists, and experts active in the structured settlements field.

About Structured Settlements

Historically, a lump sum recovery was the standard option in personal injury cases. The injured person then faced the daunting challenge of managing that lump sum in order to cover substantial ongoing medical and living expenses for her or his lifetime. All too often, this lump sum swiftly eroded away. When the recovery money was spent, the injured person was still left in the same situation as before- disabled and unable to work. In such cases, responsibility to care for this disabled person fell to Medicaid, Medicare and public assistance systems.

Structured settlements provide a better approach. A voluntary agreement is reached between the parties generally through their counsel under which the injured person receives damages in the form of a stream of tax free periodic payments tailored to address the future medical expenses and basic living needs of the injured person and his or her family from a well-capitalized, financially-secure institution. This process may be overseen and approved by a court, particularly in minor's cases.

Often, this payment stream is disbursed throughout the individual's lifetime to ensure future medical expenses and basic living needs will be met, and that the injured person will not outlive his or her compensation. In the case of a disabling injury or wrongful death of a breadwinner, the payment stream can be tailored to support the family. For example, the family may have young children to care for at home, with the other spouse unable to return to work or to earn enough to support the family. The payment stream can be tailored to meet the family's specific needs over time, including providing lump sum payments in the future when the children reach college to help fund the cost of their education.

Structured settlements are voluntary arrangements. The injured person has a choice whether or not to take a structured settlement, yet many are never informed that they have this option. In the aggregate, about one-third of the injured persons who are offered a structured settlement choose one (with the other two-thirds taking a cash lump sum). But, according to industry experts, if an injured person is informed about the option of a structured settlement *and* given the opportunity to meet with an expert who can explain how structures work, acceptance rates increase substantially

Structured settlements typically are used in the case of major physical injuries "when the loss payments are very large" (Closed Claim Survey for Commercial General Liability: Survey Results, 1997, p. 22, prepared by ISO DATA, Inc., a nonprofit arm of the Insurance Services Office, Inc., which conducted the survey under the auspices of the National Association of Insurance Commissioners (NAIC), the national group of the State insurance regulators).

The ISO study found that of the 215 claims involving structured settlements in the survey sample, 67 percent arose from "major injuries" ("permanent significant", "permanent major", "permanent grave", death and "temporary major"), with an average total present value of $408,000. The remaining 33 percent of claims involving structured settlements for other types of significant injuries had an average total present value of $210,000. The ISO study found that about half of the present value of the case was paid in an upfront lump sum to meet the injured person's cash needs (e.g., retrofitting the house for wheelchair access), and the remaining half represented the present value of the structured future payments (ISO Study, at p. 22). Overall, the ISO study found that the average total present value (including the upfront cash and the present value of the future payments) of a case resolved by structured settlement was $343,000 (ISO Study, at p. 21).

Structured settlements have the strong support of the plaintiff's bar, the defense bar, judges, and mediators.

The Federal government also makes significant use of structured settlements to resolve physical injury claims under the Vaccine Injury Compensation Trust Fund established by section 9510 of

the Internal Revenue Code and under the Federal Tort Claims Act. NSSTA estimates that over 50 percent of all Vaccine Injury Compensation Fund claims for the young children suffering physical injuries from vaccines are resolved with structured settlements.

In summary, a structured settlement provides these key public policy benefits:

- Protection against premature dissipation by injured persons who usually lack the experience to manage the financial responsibilities and risks of investing a large lump sum to cover a substantial, ongoing stream of medical and basic living expenses for a lengthy period.

- Payouts tailored to the day-to-day living expenses and the ongoing medical and financial needs of the injured person and his or her family.

- Payment streams are often for the remainder of the injured person's lifetime, so that the injured person does not outlive his or her compensation, and can be extended to the life of a spouse and to support children in the family.

- Avoids shift of responsibility for care to taxpayer-financed public assistance programs.

- Protection of Medicare's interest by using a structured settlement as a funding mechanism for future medical needs to avoid shifting the financial burden to Medicare as a secondary payor.

Legislative History

For these reasons Congress adopted, with bipartisan support, a series of special tax rules to encourage and govern the use of structured settlements to provide long-term financial security to injured victims and their families. These structured settlement tax rules have worked effectively for over three decades.

Under these rules, the full amount of the periodic payments constitutes tax-free damages to the injured person, and the liability to make the periodic payments to the injured person may be assigned by the settling defendant to a structured settlement assignment company that will use a financially-secure annuity to fund the damage payments (I.R.C. §§ 130, 104, 72).

In the Taxpayer Relief Act of 1997, in a provision sponsored by Rep. Clay Shaw (R-Fla.) and Pete Stark (D-Ca.), and co-sponsored by a bipartisan majority of the House Ways and Means Committee and by Sen. Max Baucus (D-Mont.) and Chuck Grassley (R-Iowa) in the Senate, Congress extended the structured settlement tax rules to include worker's compensation to cover physical injuries suffered in the workplace.

The Victims of Terrorism Tax Relief Act of 2001, enacted to compensate the victims of the September 11 attack, included a measure championed by Reps. Shaw and Stark along with a broad bipartisan majority of the Ways and Means Committee and with the support of Sens.

Baucus and Grassley in the Senate to protect structured settlement recipients from factoring companies which seek to purchase part or all of an injured person's future payments in exchange for a sharply discounted lump sum now. These factoring transactions can jeopardize the long-term financial security of injured persons and their families.

The Joint Committee on Taxation staff has estimated that the structured settlement tax rules in Code sections 130 and 72 have a total five-year revenue loss that is "below the *de minimis* amount ($50 million)" for the fiscal years 2013 through 2017 (Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2012-2017* (JCS-1-13), February 1, 2013, at pp. 25-26).

Conclusion

In summary, structured settlements constitute a private sector funding alternative to taxpayer-financed assistance programs to meet the ongoing, long-term medical and basic living needs of seriously-injured persons and their families, providing long-term financial security through an assured stream of payments tailored to the injured person's needs throughout his or her lifetime. Thus, structured settlements enable seriously-injured people to live with dignity and financial independence, free from reliance on government programs and interference.

The structured settlement tax rules that Congress adopted on a bipartisan basis to encourage and govern the use of structured settlements to provide long-term financial protection to injured persons and their families have worked effectively over the past three decades and should remain part of the tax law in any reform effort.

Sincerely,



Eric Vaughn, Executive Director
NSSTA